SUPREME COURT OF THE UNITED STATES.

No. 513.—October Term, 1925.

The United States of America ex rel. W. V. Hughes, Appellant, *vs.* Roy B. Gault, United States marshal.	Appeal from the District Court of the United States for the Southern District of Iowa.

[May 3, 1926.]

Mr. Justice Holmes delivered the opinion of the Court.

The relator was indicted for violation of the Anti-trust Act of July 2, 1890, (c. 647,) in the Eastern Division of the Northern District of Ohio. He appeared, upon notice, before a Commissioner of Ottumwa, Iowa, and after a hearing he was ordered to be held for removal. Rev. Stat. § 1014. The relator thereupon applied to the judges of the District Court for a writ of *habeas corpus* on the grounds that the indictment was bad and that the Commissioner rejected evidence that the relator was innocent and that therefore there was no probable cause to believe him guilty of a crime in Ohio. He also prayed for a writ of certiorari to bring the proceedings below before the Court. The writs were issued and after a hearing the District Court denied the relator his discharge and directed an order of removal to be prepared. The relator appeals under § 238 of the Judicial Code, March 3, 1911, c. 231, 36 Stat. 1087, 1157, before the Act of February 13, 1925, c. 229, went into effect. The grounds alleged are that by the refusal to hold that the indictment did not show probable cause to believe the relator guilty and that by the exclusion of the evidence the relator was deprived of his right to be tried in the District wherein the crime was committed, Constitution, Art. 3, Section 2, and Amendment VI, and that he was detained without due process of law. Amendment V.

The Constitution does not require any preliminary hearing before a person charged with a crime against the United States is brought into the Court having jurisdiction of the charge. There

he may deny the jurisdiction of the Court as he may deny his guilt, and the Constitution is satisfied by his right to contest it there. With immaterial exceptions any one in the United States is subject to the jurisdiction of the United States and may be required to stand trial wherever he is alleged to have committed the crime. In *Tinsley* v. *Treat*, 205 U. S. 20, 33, the conclusion is not that the appellant by being denied the right to present any evidence was deprived of his rights under the Constitution, but that he was denied 'a right secured by statute under the Constitution.'

As that instrument does not provide for bringing the accused into the power of the Court authorized to try him, a statute was necessary and is found in Rev. Stat. § 1014. This might have been interpreted as contemplating a summary order without other hearing than was necessary, when there was an indictment, to show that fact and that the person present was the person charged. The hardship of removal, however, has grown with the growth of the United States, and there is a natural desire to prevent it when possible, if a preliminary sifting will show that there is no probable cause for the charge. Accordingly it is held that the District Judge on application to remove acts judicially and that probable cause must be shown. *Beavers* v. *Henkel*, 194 U. S. 73, 83. *Tinsley* v. *Treat*, 205 U. S. 20, 27, 29, 32. It is to be noticed however that "where any offender . . is committed in any district other than that where the offence is to be tried, it shall be the duty of the judge of the district where such offender . . is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal" &c. But the commitment, supposed by these words already to have taken place, is entrusted not only to judges and commissioners of the United States, and judges of state courts, but to any 'mayor of a city, justice of the peace, or other magistrate, of any State where he may be found.' Obviously, in order to make it the duty of the judge to issue the warrant a mayor or a magistrate not a lawyer cannot be expected to do more than to decide in a summary way that the indictment is intended to charge an offense against the laws of the United States, that the person before him is the person charged and that there is probable cause to believe him guilty, without the magistrate's being held to more than avoiding palpable injustice. He is not intended to hold a preliminary trial and if probable cause is shown on the

government side, he is not to set it aside because on the other evidence he believes the defendant innocent. The rule that would apply to a mayor applies to a commissioner of the United States.

The relator testified before the Commissioner both in general terms and in detail that he and his company were innocent. The Commissioner excluded further details from him confirmatory of what he had sworn and evidence of customers that they were acquired in the way of competitive trade, seemingly on the ground that they would not or at least might not know that they were held as customers because of an agreement among the defendants, and also on the ground that he was not called on to listen to merely defensive proof: an opinion that he expressed. On a summary proceeding like this even if the exclusion was wrong it would not be enough to invalidate the order of removal, as the Commissioner indicated by his finding that he thought there were substantial grounds for the charge of guilt and that it was not for him to decide whether they were met by the denials of the defendant even if they seemed convincing. *Collins* v. *Loisel*, 259 U. S. 309, 314, 315.

We do not regard the attack upon the indictment as needing discussion. It has been upheld by a number of District Courts and by the Circuit Court of Appeals for the Sixth Circuit as sufficient for removal purposes. It alleges that the Iowa Malleable Iron Company under the charge of the relator was party to an agreement to eliminate competition in interstate trade and to fix excessive and noncompetitive prices and that the company and the relator are engaged in a conspiracy in restraint of trade among the States. The relator is not left in doubt of the effort of the grand jury to present him as criminal under the Sherman Act.

It is pointed out in *Beavers* v. *Henkel*, 194 U. S. 73, 83, that there are much stronger reasons for caution in surrendering an alleged criminal to a foreign nation than are required before removing a citizen from one place to another within the jurisdiction, yet in the latest case on extradition it is said that '*habeas corpus* is available only to inquire whether the magistrate had jurisdiction, whether the offence charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty.' *Fernandez* v. *Phillips*, 268 U. S. 311, 312. So

far as the attack upon the order of removal is by *habeas corpus* this would seem to apply. *Price* v. *Henkel,* 216 U. S. 488, 492.

But to recur to what we intimated at the beginning, the requirements of the statute, be they greater or less, are not requirements of the Constitution but only in aid of the Constitution, made, in rather a remote sense, 'in order that any one accused shall not be deprived of this constitutional right' to be tried in the District wherein the crime shall have been committed. 205 U. S. 32. A statement in *Harlan* v. *McGourin,* 218 U. S. 442, 447, that *Tinsley* v. *Treat* held the exclusion of evidence to be a denial of a right secured under the Federal Constitution is inaccurate as we have shown. The relator's contention that he has been deprived of constitutional rights fails.

It follows that the order of the District Court must be affirmed.

Order affirmed.

Mr. Justice SUTHERLAND concurs in the result.

Mr. Justice BRANDEIS is of the opinion that, by refusing to hear and to consider evidence introduced or offered which bore upon the existence of probable cause, the Commission did not merely commit error, but deprived the petitioner of his liberty without due process of law in violation of the Fifth Amendment, because he was denied a fair hearing. *Tinsley* v. *Treat,* 205 U. S. 20, 28, 30. Compare *Chin Yow* v. *United States,* 208 U. S. 8; *Kwock Jan Fat* v. *White,* 253 U. S. 454; *United States* v. *Tod,* 263 U. S. 149.

Mr. Justice STONE took no part in the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.